

1 Honorable Thomas S. Zilly
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

11 STRIKE 3 HOLDINGS, LLC, a Delaware
12 corporation,

13 Plaintiff,

14 v.

15 JOHN DOE, subscriber assigned IP address
73.225.38.130,

16 Defendant.

17 Case No.: 2:17-cv-01731-TSZ

**DECLARATION OF EMILIE KENNEDY
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

18 I, Emilie Kennedy, do hereby state and declare as follows:

19 1. My name is Emilie Kennedy. I am over the age of 18 and am otherwise competent to
20 make this declaration.

21 2. This declaration is based on my personal knowledge and, if called upon to do so, I
22 could and would testify that the facts stated herein are true and accurate.

23 3. I am the general counsel for General Media Systems, LLC ("GMS") and am a duly
24 licensed registered in-house counsel in the state of California (RIHC: 802963) and hold a Florida bar
25 license (FL Bar No. 92808). I have represented GMS and its subsidiaries since June of 2017, and
26 during all times relevant in the above-captioned matter.

KENNEDY DECLARATION ISO MOTION FOR SUMMARY
JUDGMENT (2:17-CV-01731-TSZ)

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1 4. Strike 3 is an intellectual property holding company that manages the copyrights and
 2 trademarks to creative works developed by GL Web Media (“GLWM”) (a production company) and
 3 Kode Shop, LLC (“Kode”) (a post-production company). GLWM is owned and operated by Greg
 4 Lansky who is a member of General Media Systems, LLC (“GMS”), Strike 3’s parent company. For
 5 over five years, GLWM and Kode have produced thousands of copyrighted works which have been
 6 assigned to Strike 3 and distributed to the public through adult websites and DVDs. These websites
 7 attract more than 20 million unique visitors each month, and Strike’s websites have one of the
 8 highest subscriber rates of anyone in the industry. Strike 3 also licenses its motion pictures to
 9 popular broadcasters, and Strike 3’s works are the top selling adult DVDs in the United States.
 10 Strike 3’s works and websites have earned considerable industry recognition and have won
 11 numerous awards.

12 5. As Strike 3’s brands have grown, its motion pictures have been subject to an
 13 increasing amount of Internet piracy via the BitTorrent File Distribution Network, which is a file
 14 sharing network often used to quickly download and distribute copyrighted works. The BitTorrent
 15 Network is a substantial method by which users infringe Strike 3’s works which are filmed in 4kHD
 16 quality and contain large file sizes. The BitTorrent Network facilitates this infringement by allowing
 17 users to download and transfer large files in pieces which can be quickly reassembled to create
 18 viewable copies of the works.

19 6. Through diligent research and investigation, we have discovered that Strike 3’s works
 20 are infringed each month by hundreds of thousands of different individuals via the BitTorrent
 21 Network. This results in lost revenues amounting to approximately millions of dollars per month.
 22 Accordingly, Strike 3 has been left with no choice but to prosecute this massive infringement to help
 23 curb these substantial losses and protect the integrity of its works. To meaningfully deter the
 24 infringement of Strike 3’s works, Strike 3 must bring litigation against thousands of infringers
 25 nationwide, and even this constitutes a very small percentage of the overall infringement.

26 7. Litigation has been used as a last resort to prosecute torrent infringement of Strike 3’s
 works. Rather, Strike 3 first uses the notice/takedown procedure provided by the Copyright Act.

1 However, despite the millions of DMCA notices that Strike 3 has caused to be sent to BitTorrent
 2 sites worldwide within the past two years, this strategy has proved largely ineffective as a means to
 3 significantly reduce infringement.

4 8. Strike 3 manages the prosecution of torrent infringers fairly and equitably. Strike 3's
 5 company policy only permits the prosecution of defendants observed infringing numerous works
 6 over a substantial period of time and prohibits prosecuting underage defendants, defendants actively
 7 serving in the U.S. armed forces, and defendants who provide proof of financial hardship. Strike 3
 8 also encourages defendants at the case's inception to provide exculpatory evidence, and promptly
 9 dismisses the case if it entertains any reasonable doubt over whether the defendant is the infringer.
 10 Throughout Strike 3's litigation efforts, we have strictly adhered to this policy.

11 9. In May of 2017, Strike 3's investigator IPP International U.G. ("IPP") used a
 12 proprietary BitTorrent client to enter a swarm inside the BitTorrent Network where users were
 13 exchanging files. IPP downloaded a piece of a digital media file linked to one of Strike 3's motion
 14 pictures from Defendant's IP address which made such file available to IPP and other torrent users.
 15 From May to December of 2017, IPP's BitTorrent client downloaded scores of additional pieces of
 16 digital media files from Defendant's IP address. All of these pieces were linked to digital media
 17 files which contained copies of 80 of Strike 3's copyrighted audio-visual works. These works were
 18 duly registered with the U.S. Copyright Office.

19 10. To address and terminate this rampant infringement, Strike 3 gathered this evidence
 20 and filed a complaint for copyright infringement on November 16, 2017 against John Doe,
 21 subscriber assigned IP address 73.225.38.130. As is the case with most piracy-related lawsuits,
 22 Strike 3 was unaware of Defendant's true identity and could only identify him by his IP address.

23 11. On November 29, 2017, Strike 3 moved for leave to serve a third party subpoena on
 24 Defendant's ISP, Comcast Cable Communications, LLC ("Comcast") prior to the Fed. Rule. Civ. P.
 25 26(f) scheduling conference so that Defendant's identity could be discovered to facilitate a further
 26 investigation and, if appropriate, amend the complaint and effectuate service. Knowledge of a
 defendant's identity allows Strike 3 to expeditiously verify that a defendant was indeed operating the

1 IP address observed infringing Strike 3's works and determine whether prosecuting the defendant
 2 complies with company policy immunizing certain categories of individuals from suit (*see ¶ 8,*
 3 *supra*). Strike 3 always encourages courts to enter protective orders so that the Defendant's identity
 4 remains anonymous throughout the course of litigation, like it did here.

5 12. On December 4, 2017, the Honorable Marsha J. Pechman granted Strike 3's motion
 6 to subpoena Comcast, and as part of her order, Comcast was required to notify the subscriber of this
 7 action before disclosing any personal identifying information. Shortly after this order issued and
 8 Comcast provided Defendant notice of the subpoena, Defendant's IP address ceased all infringement
 9 of Strike 3's works.

10 13. Though Judge Pechman's order allowed for Strike 3 to learn and keep confidential
 11 Defendant's identity, this Court prohibited Comcast from disclosing Defendant's identity to Strike 3.
 12 *See Dkt. # 8.* As a result, Strike 3 could not conduct a further investigation and fully verify that
 13 Defendant was operating the IP address that was observed infringing Strike 3's works. Typically,
 14 such an investigation would only take about 3-4 weeks, and more often than not the defendant's
 15 culpability is confirmed. If Defendant's identity would have been made available to Strike 3 at this
 16 case's onset, we would have (as set forth below) dismissed the action as to Defendant and nearly all
 17 of this protracted litigation would have been avoided.

18 14. It was not until July 20, 2018 that Mr. Edmondson finally revealed Defendant's
 19 identity to Strike 3. Immediately thereafter, Strike 3 reopened its investigation and discovered that
 20 Defendant's name belongs to two individuals, a father ("Doe Sr.") and son ("Doe Jr."), residing at
 21 different residences in Auburn, Washington. A username consisting of Does' first initial and last
 22 name was linked to several posts on a uTorrent forum website, one of which states that that user is
 23 running "uT 2.2 beta." This is the exact same BitTorrent client Defendant used in this case to
 24 infringe Strike 3's works. In another post, Doe Sr. or Doe Jr. states he "hooked up to Comcast as
 25 [his] ISP." The infringing IP address in this case was a Comcast Cable Communications IP address.
 26 Further, Strike 3 discovered evidence that Doe Jr. downloaded the video game "World of Warcraft"
 through the BitTorrent Network on the same day IPP observed him distributing Strike 3's works,

1 tweeted a hashtag on Twitter that is associated with adult content, and has at least one Twitter
2 follower who markets adult content. In light of this evidence, as well as a myriad of other posts by
3 Doe Sr. and/or Doe Jr. on torrent file sharing and computer technology-related forums, Strike 3 is
4 confident that Doe Sr. and/or Doe. Jr. is the infringer. And given the disparity in age, the nature of
5 conduct, Doe Jr.'s activity in the BitTorrent Network, and his prurient interests on social media, it is
6 highly likely that Doe Jr. is the culprit. Accordingly, on August 24, 2018, Strike 3 dismissed its
7 FAC without prejudice. Again, to be clear, had Mr. Edmondson simply provided this information to
8 us (which would have been subject to a protective order) back in early 2018, this action would have
9 been dismissed before virtually any motion practice or other activity was conducted in this case.

10
11 I declare under penalty of perjury under the laws of the state of Washington and the United
12 States of America that the foregoing is, to the best of my knowledge, true and correct.

13 DATED this 7th day of February, 2019 at Studio City, California.

14
15 
16 Emilie Kennedy

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will notify the following persons of such filing:

J. Curtis Edmondson, WSBA #43795
3699 NW John Olsen Place
Hillsboro, OR 97124
Telephone: (503) 336-3749
Email: jcedmondson@edmolaw.com

- Via CM/ECF
- Via U.S. Mail
- Via Messenger Delivery
- Via Overnight Courier
- Via Facsimile

DATED this 7th day of February, 2019.

Courtney R. Tracy
Courtney R. Tracy

Courtney R. Tracy
Legal Administrative Assistant

DECL. OF EMILIE KENNEDY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT (2:17-CV-01731-TSZ) - 1

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